APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 203—September Term, 1965.

(Argued January 5, 1966 Decided January 14, 1966.)

Docket No. 29766

WILLIAM L. TAUB,

Plaintiff-Appellant,

—v.—

RANDOLPH HALE (also known as Randolph Hale-Alcazar Theatre), United States Marshals, Albert B. Gins and Melvin J. Katz, and all other Attorneys and Agents for Randolph Hale,

Defendants-Appellees.

Before:

MOORE, SMITH and ANDERSON,

Circuit Judges.

Appeal from order of the United States District Court for the Southern District of New York, Palmieri, *J.*, dismissing the action for lack of prosecution. Affirmed.

H. HUGO PEREZ, Esq., Washington, D. C., *for Plaintiff-Appellant.*

MELVIN J. KATZ, Esq., New York, N. Y. (Albert B. Gins, Esq., New York, N. Y. and Marvin L. Levitt, Esq., New York, N. Y. on the brief), *for Defendants-Appellees.*

PER CURIAM:

The defendant, Hale, on August 18, 1960 obtained a judgment by default, in the amount of $30,680.59, against the present plaintiff, Taub, in an action in the Northern District of California. On May 29, 1961 that judgment was registered in the Southern District of New York, and in February, 1962, supplementary proceedings were commenced there for the purpose of collecting the judgment. In October, 1963, a civil commitment order was issued, and on December 9, 1963, Taub commenced the present suit to set aside the California judgment as having been obtained by fraud and deceit. This action by Taub temporarily delayed the commitment order but Judge Weinfeld eventually directed the Marshal to proceed, and the debtor was committed to jail. Meanwhile, Taub took no further action in *Taub* v. *Hale,* prior to this appeal, and none of the named parties has ever been served. By order dated May 21, 1965 Judge Palmieri dismissed the action, with prejudice, against Hale, pursuant to F. R. Civ. P. 41(b). It is from this order that Taub appeals. We affirm.

Under that Rule and the inherent power of a court to dismiss for failure to prosecute, a district judge may, *sua sponte,* and without notice to the parties, dismiss a complaint for want of prosecution, and such dismissal is largely a matter of the judge's discretion. See, *Link* v. *Wabash R. Co.,* 370 U. S. 626 (1962); 5 Moore, Federal Practice ¶41.11[2] at 1114-15 (2d ed. 1964); *Zielinski* v. *United States,* 120 F. 2d 792 (2d Cir. 1941).

It seems plain that the *Taub* v. *Hale* suit was brought only to confuse and delay the proceedings in the *Hale* v. *Taub* litigation and to prevent Hale from satisfying his judgment in that action. There was also a long and unnecessary delay in service which would, in itself, be adequate grounds for dismissal, *Messenger* v. *United States,* 231 F. 2d 328 (2d Cir. 1956); 5 Moore, Federal Practice

¶41.11 [2] at 1124 (2d ed. 1964), absent factors which would afford justification or excuse. *Cf.* 2 Moore, Federal Practice ¶4.06-1, at 981 (2d ed. 1965).

The district judge did not abuse his discretion. The order appealed from is affirmed.